March 27, 2000
VanWest v. Midland
98-76
Bench Decision

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James Van West has filed a 50-page complaint setting forth a multitude of alternative theories on which he claims that he, and members of a putative class that he purports to represent, are entitled to damages as well as declaratory and other relief for allegedly false representations that induced him to purchase a life insurance policy from Midland National Life Insurance Company.

By agreement of the parties, the determination as to whether this case should be certified as a class has been deferred until the motion to dismiss is decided.

The defendant has responded with a motion to dismiss that sets forth an equally diverse array of reasons why Van West's claims should be summarily rejected.

Some of the claims and some of the defenses border on the frivolous and provide an apt illustration of how the time of the Court and the litigants sometimes can be wasted on peripheral matters.

Background

Although the complaint contains 12 counts, the various claims asserted arise out of the same relatively simple set of facts; and, for the most part, require essentially the same proof and seek essentially the same relief. The allegations of the complaint essentially are as follows:

Beginning in 1984, Midland, through its sales agents, sold life insurance policies based on representations that the premiums would "vanish" at some fixed point in the future; that Van West and others relied on those representations in purchasing such policies; that the representations were either knowingly false or that Midland, at least, failed to disclose the assumptions on which they were based as well as the concomitant risk that the premiums might not vanish; that, if Van West and others had known the true facts, they would not have purchased the policies; and that, as a result of purchasing the policies, Van West and others did not receive what they bargained for and have been forced to expend additional sums of money to maintain their coverage.

More specifically, Van West alleges that:

- In 1984 he purchased an "Executive Select 21" policy in the face amount of $250,000 based on a representation that if he made annual premium payments of $6,310 for 5 years, the policy would be fully funded and no further premiums would be required (i.e., the premiums would

"vanish").

- The investment returns on the policy were less than anticipated and, in 1990, Midland informed him that either: (1) he would be required to resume premium payments; (2) the amount of insurance would be reduced; or, (3) he could borrow against the policy's value to pay the premiums.
- Van West opted for the loan
- In 1991, Midland informed Van West that he would be required to repay the loan, plus interest, and to pay another annual premium in order to maintain his coverage.
- Van West paid more than $13,000, as requested, and received an assurance that no further premiums would be required.
- In 1995 Midland again demanded a resumption of premium payments or a reduction of the death benefit.
- After fruitless efforts to persuade Midland to honor its alleged representations, Van West agreed to accept a new policy containing "inferior" provisions.

Accordingly, Van West seeks compensatory damages, punitive damages and disgorgement of what he alleges were Midland's ill-gotten gains.

The Claims

Despite the multitude of legal theories advanced, the plaintiffs' substantive claims essentially boil down to claims for:

1. Breach of contract (Counts VI and VII)
2. Fraud or misrepresentation (Counts I, II and IX)
3. RICO conspiracy (Counts IV and V).

In addition, there are claims for breach of fiduciary duty (Count III); negligence (Count VIII); and unjust enrichment (Count X) that either add nothing or are patently inapplicable.

There also are claims for declaratory judgment (Count XI) and reformation (Count XII) that turn on resolution of the other claims.

Standing and Ripeness

Midland moves to dismiss the entire complaint on the ground that the claims made are not yet ripe and that Van West lacks standing to make them.

In support of that contention, Midland asserts that Van West has not sustained any damages and that he will not sustain any damages unless and until his policy [presumably referring to the replacement policy] can no longer be continued at full face value without requiring the payment of additional premiums.

Whether that assertion is or is not accurate with respect to other members of the putative class, it ignores the allegations in the complaint that:

1. Van West already has paid over $13,000 more than what he claims Midland represented would be the total premiums required under his original policy.
2. In order to maintain his coverage of $250,000 without paying even more, Van West was forced to accept a new policy, the terms of which were inferior to those of the original policy.

Therefore, there is absolutely no merit to Midland's standing and ripeness argument and its motion to dismiss on those grounds is denied.

Fraud and/or Misrepresentation (Counts I, III and IX)

Counts I, II and IX assert claims for fraud and/or misrepresentation. All of then are based on the same nucleus of facts and they differ only with respect to the legal theories and labels attached to them.

Midland's motion to dismiss these counts rests on the faulty premise that the allegedly fraudulent representations were merely predictions as to what might happen in the future rather than statements of present facts.

In making that argument, Midland, once again, ignores the allegations contained in the complaint.

The complaint clearly does not describe the alleged misrepresentations as predictions or expressions of opinion as to what Midland expected might happen in the future.

On the contrary:

1. The complaint describes the alleged misrepresentations as unqualified assurances that Van West would be required to pay the specified premium for only 5 years; or, to put it another way, that the policy would cost a specified sum of money. In that respect, the alleged statements are no different from statements by a merchant regarding the price of goods sold or the number of installment payments required to fully satisfy the purchase price.
2. Moreover, the complaint alleges that, at the time the

representations were made, Midland knew that they were false; or, at least, that it failed to disclose facts indicating the likelihood that its representations were untrue.

In short, there is little substance to Midland's argument and therefore its motion to dismiss Counts I, II and IX is denied.

Breach of Fiduciary Duty (Count III)

Under Rhode Island law, the creation of a fiduciary duty depends upon the facts surrounding the relationship between the parties. Those facts must be sufficient to establish a special relationship of trust and confidence that requires the purported fiduciary to act in the best interests of the other party rather than in its own best interests.

Fiduciary relationships are not lightly inferred in commercial transactions where each party seeks to accomplish its own business objectives and those objectives may conflict.

Clearly, the parties to such a transaction are subject to a variety of constraints including prohibitions against misrepresentation and concealment of material facts. However, ordinarily, neither is required to act in the best interest of the other party.

Since the sale of insurance is a commercial business, the relationship between the parties generally cannot be characterized as fiduciary, in nature.

Thus, although Rhode Island has no *per se* rule that an insurer owes no fiduciary duty to an insured, the existence of such a relationship would be limited to unusual cases in which the relationship goes far beyond that found in an ordinary business transaction.

Here, it is clear that the fiduciary duty claim cannot be

maintained as a class action because the mere sale of “vanishing premium” policies is insufficient to establish a fiduciary relationship. What would be required is a fact-intensive analysis of the relationship between Midland and each member of the class which is inappropriate in a class action.

While Van West’s allegations regarding his personal relationship with the agent who sold him his policy present a slightly stronger case for imposing a fiduciary duty, they, too, fall far short of the mark.

The mere fact that Van West knew and trusted the salesman was not sufficient to create a fiduciary relationship between them any more than the fact that one shops at a particular hardware store because he knows and trusts the proprietor creates a fiduciary relationship between the shopper and the proprietor.

In any event, it would create a fiduciary relationship between Van West and Midland any more than the shopper’s purchase of a product at the hardware store creates a fiduciary relationship between the shopper and the manufacturer of that product.

Since Count III fails to allege facts to establish a fiduciary relationship between Van West and Midland, the motion to dismiss Count III is granted.

Bad Faith Breach of Insurance Contract in Violation of § 9-1-33 (Count VII)

Midland's motion to dismiss Count VII that alleges bad faith failure to timely perform obligations under an insurance contract in violation of G.L. § 9-1-33 suffers from the same infirmity as its motion to dismiss on ripeness and standing grounds. It is predicated on the theory that Van West's original policy was rescinded and that any claims that he may have must arise under the replacement policy.

As already noted, the complaint clearly alleges that Midland breached the original policy and that Van West was forced to accept the replacement policy in order to maintain his coverage.

Thus, there was no rescission of the original policy nor is there any indication that Van West waived or released any claims against Midland for breach of that policy.

Accordingly, Midland's motion to dismiss Count VII is denied.

Breach of Contract (Count VI) and Negligence (Count VIII)

There is no need to address these counts separately because Midland seeks to dismiss them solely on ripeness and standing grounds.

Unjust Enrichment and Constructive Trust (Count X)

Count X asserts a claim for unjust enrichment and seeks the imposition of a constructive trust consisting of all monies wrongfully obtained by Midland.

Midland, again, presents a laundry list of reasons why this count should be dismissed.

Because most of the reasons lack merit and because the one that is meritorious is dispositive, the Court will address only that reason.

As Midland points out, equitable remedies, like the imposition of a constructive trust, are available only if a plaintiff has no other adequate remedy at law.

While it is true that a plaintiff may plead inconsistent claims, in the alternative, he may not plead a claim for equitable relief, the success of which depends upon the success of another claim that would provide him with an adequate remedy at law.

That is precisely the situation in this case. In order to prevail on his constructive trust claim, Van West would have to show that it is inequitable to allow Midland to retain the premiums that it collected. In turn, in order to establish that, Van West must show that the premiums were obtained as a result of fraud, misrepresentation or breach of contract, any of which would entitle Van West to recover money damages that would make him whole.

Therefore, Midland's motion to dismiss Count X is granted.

Summary

To summarize:

1. Midland’s motion to dismiss the entire complaint on ripeness and standing grounds is denied.
2. Midland’s specific motions to dismiss Counts I, II, and IX (fraud and misrepresentation) and Count VII (bad faith breach of insurance contract) are denied.
3. Midland’s motions to dismiss Counts III (breach of fiduciary duty), IV-V (RICO violations) and Count X (unjust enrichment and constructive trust) are granted.